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**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, CENTRAL DIVISION**

BEST VINYL, LLC, ET AL.

Plaintiffs,

v.

HOMELAND VINYL PRODUCTS, INC., ET
AL.,

Defendants.

**MEMORANDUM DECISION AND
ORDER GRANTING BEST VINYL,
LLC'S AND VANGUARD VINYL, INC.'S
MOTION TO DISMISS THE FIFTH
CAUSE OF ACTION IN HOMELAND'S
COUNTERCLAIM**

Consolidated Case No. 2:10-cv-01158

Judge David Nuffer

Vanguard Vinyl, Inc. ("Vanguard") and Best Vinyl, LLC ("Best") filed a motion to dismiss the Fifth Cause of Action ("Unjust Enrichment") in Homeland Vinyl Product's Counterclaim [Docket No. 13]. That motion came before the Court on Thursday, October 25, 2012 at 8:30 am. Evan S. Strassberg and Michael Barnhill of Vantus Law Group appeared at the hearing for Vanguard and Best, and Eric Maxfield and Andrew Sjoblom appeared at the hearing for Homeland.

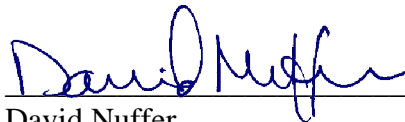
The Court considered the moving papers, Homeland's response, and the reply thereto, but did not take oral argument. Having considered the relevant pleadings and the arguments set forth in the parties' briefing, and for good cause appearing,

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss the Fifth Cause of Action in Defendant's Counterclaim (docket no. 13) is GRANTED. The Court finds that an unjust enrichment claim applies in contract settings only when a contract is unenforceable and no one claims the contract for sale was unenforceable. The Court finds there was no failure of consideration, illegality, or incapacity. Here, Homeland has asserted a contract claim that is the essence of its claim. Because Homeland has a legal remedy, there is no room for an equitable remedy of unjust enrichment.

IT IS FURTHER ORDERED that Homeland Vinyl Products, Inc.'s claim for unjust enrichment (claim no. 5) set forth in Homeland's Answer and Counterclaim (docket no. 6) is hereby DISMISSED WITH PREJUDICE.

ENTERED this 5th day of November, 2012.

UNITED STATES DISTRICT COURT

A handwritten signature in blue ink, appearing to read "David Nuffer", is written over a horizontal line.

David Nuffer
U.S. District Court Judge